APPENDIX A

Decrees and Opinions Below

1. Decree of trial court.

(T. 66, R. 105)

IN THE GARLAND CHANCERY COURT

LAMAR BATH HOUSE COMPANY, ET AL. ..... *Plaintiffs*

v. Docket No. 29535

CITY OF HOT SPRINGS, ARKANSAS, ET AL. ..... *Defendants*

DECREE

On this 21st day of May, 1957, this cause duly comes on to be heard on the regular call of the calendar, Plaintiffs appearing by their solicitors, House, Holmes, Roddy, Butler & Jewell, by William M. Clark, and the Defendants appearing by their solicitors, Wood, Chesnutt & Smith, by James W. Chesnutt; and the cause is submitted to the Court upon the complaint, proof of service of summons within the time and manner required by law, Defendants' answer and cross-complaint, Plaintiffs' response thereto, stipulations entered into by the parties, and exhibits to said stipulations, testimony *ore tenus* of witnesses, written briefs and argument of counsel, from all of which the Court finds and concludes:

1. That the allegations made in the pleadings which were admitted by the parties are true and correct.

2. That the matters stipulated by the parties are true and correct as stipulated.

3. That the agreement between the United States and the City of Hot Springs, entered into in final written form in 1935, attached to the Complaint as Exhibit D, relating to the sewer system of the City, did, by its terms, provide that the cost of all repairs, alterations, maintenance and operation of the sewer system of the City of Hot Springs would be borne by other than United States Government sources and that the term, "United States Government sources," included the Plaintiffs in this pro-

ceeding, they being beneficiaries of the agreement, that the Defendants have received the benefits of the agreement, but that the agreement is *ultra vires* and invalid in purporting to bind the City so as to preclude it forever from imposing charges for such costs against Plaintiffs, including the particular sewer charges under Ordinance 2444 and 2449 of the City found hereinbelow to be due from Plaintiffs.

4. That the previous chancery proceeding, Docket No. 12972 in this Court, the entire record of which is in evidence in this proceeding, does not operate, as and by *res judicata*, to bar or preclude the imposition of the sewer charges found to be due hereinbelow.

5. That the Defendants are not estopped from imposing the sewer charges hereinbelow found to be due.

6. That Ordinance Nos. 2444 and 2449 of the City of Hot Springs and the statutes of the State of Arkansas, governing sewer charges, Volume 2 Ark. Stats. 1947 Annotated, Sections 19-4101 through 19-4122, and the imposition thereunder of sewer charges upon Plaintiffs calculated as hereinbelow provided, and the construction of said ordinance and statutes and their application to Plaintiffs so as to impose said charges upon them are valid and not repugnant either to the Constitution of Arkansas or the Constitution or laws of the United States.

7. That the rights, titles, privileges and immunities of Plaintiffs under the Constitution of Arkansas, the Constitution of the United States (including, and without limiting the foregoing, those under the provisions cited in the pleadings and Article 1, Section 8, Clause 17 thereof), statutes of Arkansas, statutes and laws of the United States and authority exercised under each and all of the foregoing, all of which rights, titles, privileges and immunities have been specially set up or claimed in this proceeding, are not impaired, abridged or violated by the imposition of the sewer charges hereinbelow found to be due from Plaintiffs by virtue of Ordinance Nos. 2444 and 2449, and Plaintiffs are not deprived of any of same by said sewer charges or by the application of said ordinances to Plaintiffs to the extent of those particular charges.

8. That each respective Plaintiff is liable for sewer charges in an amount calculated upon the basis of its consumption of water from and provided to it by the municipally owned city water system only, as reduced by the volume of said water which is consumed but which is so used that it does not reach the city sewer system; that hot mineral water provided to Plaintiffs by the National Park Service of the United States Government from its hot springs and discharged into the City sewer system should be excluded from the computation of sewer charges to be made against Plaintiffs under Ordinance 2444 establishing sewer charges for the City of Hot Springs; that Plaintiffs are not liable for sewer charges calculated upon the basis of their consumption of such hot mineral water; and that Defendants (Cross-Complainants), City of Hot Springs and the Hot Springs Sewer Committee, are entitled to judgment against the respective Plaintiffs for sewer charges for water provided to the Plaintiffs from the Hot Springs Municipal Water System and discharged by Plaintiffs into the sewer system of the City of Hot Springs, Arkansas, for the period November 1953 through April 1957, in the following amounts:

Lamar Bath House	$543.30
Buckstaff Bath House Company	354.30
Ozark Bath House Company	279.60
Quapaw Bath House Company	669.30
Fordyce Bath House	678.60
Maurice Bath House	438.30
Hale Bath House	160.20
Superior Bath House	172.20.

9. That no penalties or attorney's fees are due to Defendants (Cross-Complainants) from the Plaintiffs.

WHEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DECREED:

That defendants, City of Hot Springs, Arkansas, and Hot Springs Sewer Committee, be and they hereby are enjoined and restrained from levying and collecting sewer charges from Plaintiffs for, or calculated on the basis of, water provided to Plaintiffs by the United States Govern-

ment, National Park Service, and discharged into the sewer system of the City of Hot Springs;

That Defendants, City of Hot Springs and Hot Springs Sewer Committee, are hereby granted judgment for, and shall have and recover from the respective Plaintiffs, sewer charges for water provided to the respective Plaintiffs by the Hot Springs Municipal Water System and discharged into the sewer system of the City of Hot Springs, Arkansas, for the period from November 1953 through April 1957, in the following respective amounts, the amount applicable to and against each Plaintiff being set forth opposite its name:

Lamar Bath House	$543.30
Buckstaff Bath House Company	354.30
Ozark Bath House Company	279.60
Quapaw Bath House Company	669.30
Fordyce Bath House	678.60
Maurice Bath House	438.30
Hale Bath House	160.20
Superior Bath House	172.20.

That the claims and prayers of the Complaint, except to the extent of the relief granted hereinabove, be and they are hereby dismissed; that the claims and prayers of the Cross-Complaint, except to the extent of the judgments hereinabove awarded against Plaintiffs, respectively, be and they are hereby dismissed; and that each party hereto shall bear his or its own costs herein.

And the parties hereto object and except to the findings, conclusions, rulings and judgments made, reached and rendered herein, other than the findings and conclusions numbered 1 and 2, each party Plaintiff and each party Defendant making it known to the Court that he or it desires the Court to find each issue in its favor, grant it all relief prayed in his or its pleadings herein and deny any and all relief prayed in the pleadings of his or its opposing parties herein, the foregoing matters being hereby noted of record; and all parties hereto pray appeals from this decree to the Supreme Court of Arkansas, which appeals are hereby granted.

2. Decree of Supreme Court of Arkansas.

(T. 144)

IN THE SUPREME COURT OF ARKANSAS

MAY TERM 1958 June 16, 1958

Title omitted (Docket No. 1536)

DECREE

This cause came on to be heard upon the transcript of the record of the chancery court of Garland County, and was argued by solicitors; on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said chancery court in this cause on the direct appeal.

It is therefore ordered and decreed by the Court that on the direct appeal the decree of said chancery court be and it is hereby affirmed.

On the cross appeal of appellees it is the opinion of the Court that the chancery court erred in denying appellees the right to base sewer service charges on the total volume of all water discharged into the sewers, including the hot mineral water.

It is therefore ordered and decreed by the Court that so much of said decree be and it is hereby reversed, annulled and set aside with costs, and that this cause be remanded to said chancery court with directions to enter a decree consistent with the opinion herein delivered.

It is further considered that said appellees recover of said appellants all their costs in this Court, in this cause expended, and have execution thereof. McFaddin, J., dissents.

3. Opinion, June 16, 1958.

(T. 135)

SUPREME COURT OF ARKANSAS

Title omitted (No. 1536).

J. SEABORN HOLT, *Associate Justice*

In 1934 the City of Hot Springs entered into an agreement with the National Park Service, Department of Interior, relative to the construction of a city sewer system and sewage plant in Hot Springs. The parties recognizing that Hot Springs' reservation, including appellants' bath houses located thereon, contributed largely to the city's sewage, the Park Service agreed to pay 22.5 percent of the construction cost and an additional 5 per cent in *lieu* of maintenance and operation charges. Park Service in the aggregate contributed $82,000. Appellants' bath houses furnished no part of the consideration. The agreement contained this recital: "1. That the Government be not charged for any service or use of the system at any time in the future. 2. That the cost of all repairs, alterations, maintenance and operation of the system be borne by other than the United States government sources. Necessary replacements of the entire plant due to natural or human destruction not to be considered a part of paragraph 2." The balance of the cost of construction was paid partly by the U. S. Public Works Administration and partly by a city bond issue of $175,000, financed by a 1.5 mill *ad valorem* tax on the property within the city. In 1934 the 1.5 mill tax was extended against appellants' property and assessed for taxation. In July 1935 appellants obtained a temporary restraining order against the collection of this tax, setting up the agreement as a defense. Thereafter, in 1945, on the city's motion to dissolve the injunction and for a decree for past due taxes, the court held, in effect, that appellants were U. S. government sources within the meaning of the agreement and enjoined the city from assessing and collecting the 1.5 mill tax against them. There was no appeal from this decree.

The record reflects that by 1952, the city sewage disposal plants were obsolescent, inadequate and heavily

overloaded, creating a serious health problem, and the pollution of Lakes Hamilton and Catherine. A thorough engineering study was made resulting in recommendations to the city to enlarge, overhaul and repair the disposal system and to change the method of purifying the city sewage. Following this recommendation and to cover the cost and properly proceeding under the provisions of Act 132 of 1933 (Sec. 19-4101 etc. Ark. Stats. 1947), the city caused bonds to be issued in the amount of $786,000, which were to be financed by a sewer service charge. It appears that prior to this time the city had never levied any sewer service charge. Sewer service charge rates were set forth in Ordinance 2444 by the city. Following the completion of the work, sewer service charges were made against and sent to appellants and other users of the system. Charges to appellants were calculated upon the total volume of sewage discharged by them from their bath houses into the sewer system, and included both the city water and also the hot mineral water furnished by the National Park Service. Appellants operate commercial bath house companies located on the U. S. reservation and are large consumers of water, and large contributors to the water that goes through the sewage system. There was evidence that in 1952 appellants discharged 57,365,500 gallons of sewage into the system, or about 7.5 percent of the total flow. In 1953 the total number of gallons discharged was 55,705,800, or 7.5 percent of the total flow. Appellants refused to pay to the city any sewer service charges and in 1955 brought the present suit to enjoin collection. In the trial court, and here on appeal, appellants relied on the following points: "1. The agreement is valid, and imposition of sewer charges upon appellants is an unconstitutional impairment of contract. 2. The validity of the agreement is *res judicata*. 2. Appellees are estopped to assert any invalidity in the agreement and from imposing sewer charges upon appellants. 4. The city had no legislative or territorial jurisdiction to impose sewer charges upon appellants, and the trial court had no jurisdiction to render judgment against them. 5. No claim or judgment *in personam* could lawfully be made or rendered against appellants. 6. In no event could any charge be calculated against appellants

on volume of hot mineral water from the National Park springs."

Appellees defended primarily on the ground that their agreement or contract relied upon by appellants was *ultra vires* as applied to the sewer service charge, asserted their right to collect these service charges from appellants and in a cross complaint asked for a judgment for the full amount of the unpaid sewer service charges not only for the city water but also for the hot mineral water furnished by the National Park Service which, as indicated, was also discharged through the sewer system. Upon a hearing the trial court held that the contract or agreement of 1934 was valid as to the 1.5 mill *ad valorem* tax for the original construction, but *ultra vires* as applied to the present sewer service charges, and that appellants were liable only for the amount of city water discharged into the sewers and not for the hot mineral water. The court also disallowed the city's claim for penalties and attorney's fees. It appears that all bonds for the original construction under the 1.5 mill tax are paid and this tax is no longer levied. The case is before us on appellants' direct appeal and a cross appeal of appellees.

The primary, if not the decisive, question presented is whether the above agreement between the city and the National Park Service is *ultra vires* in the circumstances here. We hold that it was in so far as it would estop or deny the City of Hot Springs the right and power now or at any future time, in the exercise of its police powers to enforce collection of sewer charges against appellants. The city not only has the right in exercising its legislative and governmental functions to protect the health, safety and general welfare of its people, but it is its duty to do so and may not contract away any such right. "A municipality cannot bind itself by a perpetual contract, or by one which lasts an unreasonable length of time . . . It is declared to be against public policy to permit a municipal corporation to part with any of its legislative power. In the absence of a clear grant of power from the legislature, the municipal authorities can do nothing which amounts in effect to the alienation of a substantial right of the public. It cannot obligate itself not to exercise such powers, and

a contract in which it purports to do so, even upon valuable consideration, is void. Thus, a municipal corporation cannot, by contract or otherwise, divest itself of its general police power, or of the power of eminent domain which has been delegated to it by the legislature, or of the power of taxation," *Risser* v. *City of Little Rock*, 225 Ark. 318, 281 S. W. 2d 949.

In effect, the same issues as here were presented to the Supreme Court of Ohio in *State ex rel. Gordon* v. *Taylor, et al.*, 79 N. E. 2d 127. In that case Ohio State University refused to pay a bill for sewer service charges presented by the City of Columbus on the ground that it had many years before entered into an agreement with the city under the terms of which it had conveyed to the city an easement across University property for sewer purposes in consideration of "the right and privileges to the Board of Trustees, and to the Ohio State University, to use the city sewers on the campus of said university without cost or expense to said university, or its Board of Trustees." In rejecting the university's defense, that court used this language: "The language of the grant of easement involved herein, if construed as contended by counsel for the respondents, would be so broad and comprehensive as to vest in the university the right to use the city sewer and the benefit of the city's sewerage system without restriction or limitation, and without liability for any future charge or expense of maintenance, renewal or additional facilities required by any change of conditions . . . If the University is completely exempted from any charge therefor and is privileged, without any limitation or restriction, to empty into the city sewers all the sewage from the campus, the boundaries of which are not defined or limited and may be indefinitely extended, such exemption could be held valid only if the city, notwithstanding its duty and obligation to protect the health, safety and welfare of the citizens of Columbus, is authorized to relinquish as to the university property the powers and prerogatives vested in the municipality and to contract away its duty and obligation to require all users of the city sewerage system to pay proportionately the cost and expense of an essential municipal function. In the construction of a sewerage system, a municipality acts in a governmental capacity, and, hence, in

accepting the grant of easement subject to the right of the university to use the sewer would be *ultra vires*, if by such exemption the city bargained away all its duties and obligations with reference to maintenance of such sewer and agreed to forever maintain it for the benefit of the university. It is only in the maintenance of a sewerage system that the city acts in a ministerial or proprietary function. *City of Portsmouth* v. *Mitchell Mfg. Co.*, 113 Ohio St. 250, 148 N. E. 846, 43 A. L. R. 961." (*State* v. *Taylor*, 79 N. E. 2d 127 *supra*)

"The supervision and regulation of the sewers is a police function of the city. Therefore, in granting permission for the use of the sewers in the first instance and for the continuing use thereof, the city must at all times retain control, and any attempt by way of contract to deprive the city of that control is void. The police power of the city cannot be bargained away by contract, but must at all times be available for use to meet such public needs as may arise. McQuillin, Municipal Corporations, 2d Ed. Rev. Secs. 393, 1564," *Ericksen* v. *City of Sioux Falls*, 14 N. W. 2d 89. ". . . an indefinite exemption, the purpose or amount of which is not reasonably ascertainable, is not only *ultra vires*, but is also against public policy," *City of Cleveland* v. *Edwards*, 143 N. E. 181, 37 A. L. R. 1352. ". . . in the absence of express grant of power, a municipal corporation has no authority to make contracts for the exemption or commutation of local assessments," *McQuillin, 3rd Ed., 14, Sec. 38.86.* Cases from Delaware, Indiana, Kentucky, Massachusetts, Mississippi, Missouri, New York, Wisconsin and Ohio are cited to support the text.

Appellants have presented for our consideration a large number of cases in their effort to uphold the validity of the above agreement between the city and the National Park Service, however, upon examination of each of these cases there appears to have been statutory or constitutional authority which permitted the municipality to enter into the contract in question. As pointed out above, in the present case we find no authority or express grant of power, statutory or otherwise, giving to the City of Hot Springs the authority to exempt appellants here from the sewer

service charge in question. "A common council 'cannot bargain away or divest itself of the right to make reasonable laws, and to exercise the police power whenever it becomes necessary to conserve or promote the health, safety or welfare of the community.' So, power conferred upon a city to contract respecting a particular matter does not confer power, by implication, so to contract with reference thereto as to embarrass and interfere with its future control over the matter, as the public interests may require. Hence, all contracts which interfere with the legislative or governmental functions of the municipality are absolutely void." *McQuillin, 3rd Ed. Vol. 10, Sec. 29.07.*

It appears practically undisputed here that when this bond issue of $786,000 was made that the City of Hot Springs was faced with a serious problem of sewage disposal, affecting the health and well being of its inhabitants, and we see no valid reason, and appellants have pointed to none, why appellants who are citizens and conducting their businesses in that municipality should not pay their just share, through sewer service charges, of this necessary improvement for the public good.

Appellants' contention that "the validity of the agreement is *res judicata*" cannot be sustained. As we have heretofore stated, "the police power of a city must at all times be available for use to meet such public needs as may arise." It does not appear from the record that any such need existed in 1935 when a temporary restraining order was obtained or in 1945 when it was made permanent. Consequently, at those times, there was no occasion for the city to exercise its police powers. On the other hand it appears now that such a need does exist and consequently there is an occasion for the city to exercise its police powers.

On the contention of appellants that the city is estopped, little need be said in addition to what we have set out above. Since we are holding that the contract or agreement here in question is *ultra vires*, then the city may not be estopped to deny its invalidity. ". . . contracts which the corporation is not permitted legally to enter into are not subject of ratification, and a city may not be estopped to deny the invalidity of a contract that is *ultra*

rires in the sense that it is not within the power of the municipality to make," *McQuillin, 3rd Ed. Vol. 10, Sec. 29.104, p. 422.*

On cross appeal appellees contend that there was error in the trial court's decree in denying them the right to base sewer service charges on the total volume of all water which appellants discharged into the sewers, which included both the city water and the hot mineral water. We agree that this contention should be sustained. It appears that the basis of the sewer service charge is based on the volume of sewage discharged into and through the sewers. The record reflects that the water consumption for the calendar year 1952 was used as a basis for sewer charges for period from October 1953 through September 1954. This water, which was emptied into the sewers, amounted to approximately 4,452,800 gallons of city water and 52,912,700 gallons of hot mineral water. For 1953 the volume of city water was slightly greater and that of the hot mineral water somewhat less. As indicated, sewer service charges are based on the use of the system. Appellants used the water in their businesses in which, obviously, they seek to make a profit, and we can see no just reason why they should not be required to share, along with all other users of sewers, the cost burden of disposing of this water through the sewer system.

We hold that there was no error in denying to appellees the penalties and attorney's fees as provided in *Sec. 19-4113 Ark. Stats. 1947.* This statute is penal in its nature and must, therefore, be strictly construed. It provides in part: "If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten percent, and a reasonable attorney's fee, may be recovered by the sewer Committee . . ." This provision says that penalties "may be recovered" not that they must be. The trial court is thus granted a reasonable discretion in denying or allowing penalties depending on the facts and circumstances. "It is a general rule of statutory construction that penal statutes are to be strictly construed. Statutes imposing penalties are subject to this rule of strict construction. They will not be construed to include any-

thing beyond their letter, even though within their spirit. The rule that penal laws are to be construed strictly is perhaps not much younger than construction itself. It is founded on the tenderness of the law for the rights of individuals, and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department." 23 *Am. Jur., Forfeitures and Penalties*, Sec. 37, p. 631. We find no abuse of that discretion here.

Accordingly, the decree is affirmed on direct appeal, on appellees' cross appeal the decree is reversed and remanded with directions to enter a decree consistent with this opinion.

Mr. Justice McFaddin dissents.

4. Decree in previous suit, October 23, 1945.

(T. 45; R. 103 and Exhibit 11, p. 52)

IN THE GARLAND CHANCERY COURT

LAMAR BATH HOUSE COMPANY, SUPERIOR BATH HOUSE, HALE BATH HOUSE, MAURICE BATHS, FORDYCE BATHS, INC., QUAPAW BATHS, OZARK BATH HOUSE, BUCKSTAFF BATHS ..... *Plaintiffs.*

VS. No. 12972

MACK WILSON, TAX COLLECTOR OF GARLAND COUNTY, ARKANSAS, CITY OF HOT SPRINGS, ARKANSAS, LEO P. MCLAUGHLIN, MAYOR OF THE CITY OF HOT SPRINGS, ARKANSAS, JAY ROWLAND, A. T. DAVIES, CITY ATTORNEY OF THE CITY OF HOT SPRINGS, ARKANSAS AND ROY C. RAEF, COUNTY CLERK OF GARLAND COUNTY ..... *Defendants.*

INJUNCTION AND RESTRAINING ORDER

On this day come the plaintiffs by Wootton, Land & Matthews, their solicitors, and come the defendants by their solicitors, Jay Rowland and Curtis Ridgway:

And it appearing to the Court that the defendants and each of them in this cause have entered their appearance herein and consented that this cause may be submitted to the Court for its consideration, decision and judgment

upon the complaint and its exhibits, and demurrers thereto filed on behalf of the defendants, the temporary injunction and restraining order heretofore granted in this cause, and the motion to dissolve temporary injunction and render judgment for past due taxes, filed by the defendants herein, and this action being reached upon the call of the calendar is submitted to the Court for its consideration and final judgment upon the complaint, with its exhibits and demurrers thereto, the temporary injunction and restraining order heretofore entered herein, and the motion to dissolve temporary injunction and rendered judgment for past due taxes, the certified copy of resolution of the City Council of Hot Springs, Arkansas, bearing date of July 1, 1935, and reciting the inclusion of the Bath Houses located on the Hot Springs National Park Reservation in the agreement entered into by and between the City of Hot Springs and the Hot Springs National Park, said resolution being introduced by agreement of counsel and pursuant to stipulation of counsel that it is a true and correct copy of the resolution as adopted by the City Council of Hot Springs, Arkansas, July 1, 1935, and approved by Leo P. McLaughlin, Mayor; upon testimony of Thomas J. Allen and George C. Bolton, taken *ore tenus* at the bar of the Court, said testimony being reduced to writing by Allen Watkins, Court Stenographer, who had been first sworn by the Court to truly take and transcribe the testimony adduced in the cause.

The Court being well and sufficiently advised as to all matters of fact and law arising herein and the premises being fully seen, doth find all issues of fact and law in favor of the plaintiff and against the defendant in this cause.

It is, therefore, by the Court considered, ordered, adjudged and decreed that the plaintiffs be, and they are hereby granted the relief for and from the matters complained of in their complaint; and the Court doth order, adjudge and decree that the temporary injunction heretofore entered herein be made permanent, and, the Court doth order and adjudge that Mack Wilson, Tax Collector of Garland County, Arkansas, The City of Hot Springs, Arkansas, Leo P. McLaughlin, Mayor of the City of Hot Springs, Arkansas, Jay Rowland, City Attorney of the City of Hot

Springs, Arkansas, and Roy C. Raef, County Clerk of Garland County, Arkansas, and the agents and successors in office of each and every one of them, be forever enjoined and restrained from pursuing or continuing the matters complained of in the complaint of the plaintiffs filed herein: that Mack Wilson, Tax Collector of Garland County, Arkansas, his agents and successors in office, be, and he is hereby forever enjoined and restrained from collecting or attempting to collect from the plaintiffs herein the 1.5 mill tax levied by the City of Hot Springs, Arkansas, by Ordinance adopted and approved February 1, 1934, and from refusing to accept the taxes due the State of Arkansas and Garland County, Arkansas, from the plaintiffs herein without the payment of said levy, that the City of Hot Springs, Arkansas, Leo P. McLaughlin, Mayor of the City of Hot Springs, Arkansas, and Jay Rowland, City Attorney of the City of Hot Springs, Arkansas, and their agents and successors in office and each of them are forever enjoined and restrained from collecting or attempting to collect from the plaintiffs herein the 1.5 mill tax levied by the City of Hot Springs, Arkansas, by Ordinance adopted and approved February 1, 1934; and that Roy C. Raef, County Clerk of Garland County, Arkansas, his agents and successors in office are forever restrained and enjoined from extending on the Tax Books of Garland County, Arkansas, the 1.5 mill tax levied by the City Council of the City of Hot Springs, Arkansas, by Ordinance adopted February 1, 1934, against the property of the plaintiffs in this cause.

That the Clerk do issue under the seal of this Court the order and injunction herein allowed.

To which ruling of the Court the defendants at the time duly excepted and prayed an appeal to the Supreme Court of the State of Arkansas, which is hereby granted.

APPENDIX B

Ordinances, statutes, Agreement and constitutional provisions.

(T. 12: R. 31)

1. Ordinance 2444 of the City of Hot Springs, Arkansas. (August 17, 1953.)

An Ordinance Fixing the Rates to Be Charged for Municipal Sewer Services in the City of Hot Springs, Arkansas and Declaring an Emergency.

WHEREAS, the City of Hot Springs, Arkansas, has found it necessary to make extensive improvements in the municipal sewer system which will call for the expenditure of a large sum of money, to be financed by a proposed issue of $985,000 in sewer revenue bonds, and this makes it necessary to revise the charges for sewer services; . . .

BE IT ORDAINED by the City Council of the City of Hot Springs, Arkansas:

SECTION 1. The following schedule of sewer charges shall apply to all sewer service rendered by the City of Hot Springs:

All monthly sewer charges shall be based upon water consumption. All customers shall be classified as either domestic or commercial customers by the Sewer Committee, depending upon whether the water consumption for the individual customer is used for domestic or commercial purposes. In the case of domestic customers the average monthly water consumption for the months of January, February, March, April, November, and December of the calendar year preceding that in which the bills are rendered shall be computed separately for each customer, and a uniform monthly charge for each customer for each calendar year shall be determined by applying the following schedule of rates to the said average monthly usage. In the case of commercial customers the average monthly water consumption for the calendar year preceding that in which the bills are rendered shall be computed separately for each customer, and a uniform monthly sewer charge for each customer for each calendar year shall be determined by applying the following schedule of rates to the said aver-

age monthly usage; except that in the case of a commercial customer where an appreciable percentage of his total water consumption is so used that it does not reach the sanitary sewer, then the Sewer Committee shall determine the percentage of total water usage which does reach the sanitary sewer, and the following schedule of rates shall apply to that percentage only.

SCHEDULE OF RATES

Minimum—$0.50 per month

First 25,000 gals. water consumption per mo.
$0.22 per 1000 gals.

Next 25,000 gals. water consumption per mo.
0.195 per 1000 gals.

Next 30,000 gals. water consumption per mo.
0.17 per 1000 gals.

Next 70,000 gals. water consumption per mo.
0.145 per 1000 gals.

Next 750,000 gals. water consumption per mo.
0.11 per 1000 gals.

Next 750,000 gals. water consumption per mo.
0.1025 per 1000 gals.

All over 1,650,000 gals. water consumption per mo.
0.085 per 1000 gals.

Connection Charge: No connection charge shall be made for the future connection of customers to the system prior to 1956. During the calendar year of 1956 a connection charge of $10 shall be made, and this charge shall increase $10 for each calendar year thereafter, but shall not exceed $70.

Billing: All bills for sewer service shall be rendered monthly and shall cover the same period as the corresponding monthly water bill. All bills shall be rendered in the net amount due. Under the provisions of Section 19-4113, Arkansas Statutes 1947, a lien is fixed upon the land for any unpaid sewer service charge, even though the use of the sewer system may be by a tenant or lessee instead

of the owner, but vacant unoccupied property not actually using the sewer system shall not be subject to a service charge. The burden of proving non-use during vacancy shall rest upon the owner of the property. If any charge is not paid before the tenth day after the date of billing, a penalty of ten per centum shall be added, and if not paid within thirty days after the date of billing, the statutory lien may be enforced by suit in chancery court for the delinquent service charge plus the penalty plus a reasonable attorney fee, to be fixed by the court.

SECTION 2. It is hereby ascertained and declared that the City of Hot Springs has under consideration the construction of extensive and greatly-needed improvements and additions to its municipal sewer system; therefore, an emergency exists and this ordinance, being necessary for the preservation of the public peace, health and safety, shall become effective immediately upon its passage.

2. Ordinance 2449 of the City of Hot Springs, Arkansas. (October 12, 1953.)

(T. 16; R. 35)

WHEREAS, the City of Hot Springs, Arkansas, owns and operates a municipal sewer system which is free of debt but which needs to be improved and extended in order to give adequate service to the inhabitants of the City; . . . BE IT ORDAINED by the City Council of the City of Hot Springs, Arkansas:

SECTION 1. The Council hereby declares its intention to construct the sewer facilities as planned by the engineers for the project, which are briefly described as follows: The enlargement and rehabilitation of existing sewage treatment facilities (the new improvements are sometimes hereinafter termed the "Works" and the new improvements and the existing municipal sewer system combined are sometimes hereinafter termed the "System"). Subject to the authorization granted by Ordinance No. 2441 of the City, passed and approved July 20, 1953, creating the Sewer Committee, the construction shall be under the control and supervision of said Sewer Committee, and after construction, the System shall be under the management of said Committee.

SECTION 3. That in order to provide funds to pay the cost of construction of the Works, there are hereby authorized to be issued negotiable coupon revenue bonds of the City of Hot Springs in the aggregate principal amount of $830,600, each of which shall be designated as "Sewer Revenue Bond." . . .

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SECTION 6. . . . The income and revenues from such operation shall be set aside into a separate and special fund hereby created and designated "Sewer Fund." Such income and revenues are hereby pledged, and shall be applied, to the payment of the operation, repair, extension, betterment, and maintenance of the System, to the payment of all bonds issued under this ordinance and secured hereby and the interest thereon, and to provide an adequate depreciation fund, in the manner hereinafter set out.

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SECTION 12. By the provisions of said Act No. 132, as amended, the payment of the sewer service charges is secured by a lien upon the premises served by the System. Said charges shall constitute a lien upon the fee title to the land and permanent improvements, even though the occupant receiving the benefit of the service for which the rate or charge is due has merely a leasehold interest (or other lesser estate) in the premises. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten per centum and a reasonable attorney's fee, may be recovered by a chancery suit filed in the Chancery Court of Garland County, and the City agrees to bring foreclosure suits for past due service charges.

SECTION 13. The owner or owners of all improved property lying within the area that is now served or will, after the proposed improvements have been made, be served by the System, are hereby directed and required to connect all toilet and waste water facilities of such improved property with said System as soon as the service is available; and the owners of property that is improved after the completion of the improvements to the System

and can be served by the System shall immediately connect the toilet and waste water facilities of such property with the System.

SECTION 14. The Sewer Committee shall send a written notice to any owner of improved property that can be served by the System but is not connected, to make such connection within thirty days from the date of said notice; and any property owner failing or refusing to connect his improved property with the System after being notified to do so shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than two dollars and not exceeding ten dollars, and each day's failure or refusal after expiration of the time fixed in the notice to make the connection shall be a separate offense; provided, nothing in this ordinance shall be so construed as to compel the building of a sewer by one property owner over the property of another, or for a greater distance from his property through or into any street or alley than three hundred (300) feet to a place where a connection can be made to the System.

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SECTION 15. . . .

(p) It is hereby declared that the provisions of this ordinance constitute a contract by and between the City and the holders of the bonds and interest coupons issued by authority hereof; and after the bonds have been issued and paid for, the terms of said provisions shall not be changed except with the written consent of the holders of all bonds and coupons then outstanding.

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3. Arkansas sewer statute. Act 132 of 1933. Vol. 2 Arkansas Statutes 1947 Annotated (Official Ed.) Section 19-4101 et seq.

19-4101. Every city (of either the first or second class) and town in the State of Arkansas is hereby authorized and empowered to own, acquire, construct, equip, operate and maintain within and/or without the corporate limits of such city or town, a sewage collection system and/or a sewage treatment plant or plants, intercepting

sewers, outfall sewers, force mains, pumping stations, ejector stations and all other appurtenances necessary or useful and convenient for the collection and/or treatment, purification and disposal, in a sanitary manner of the liquid and solid waste, sewage, night soil and industrial waste of such city or town, and shall have authority to acquire by gift, grant, purchase, condemnation, or otherwise, all necessary lands, rights-of-way and property therefor, within and/or without the corporate limits of such city or town, and to issue revenue bonds to pay the cost of such works and property. The term "works," where hereinafter used in this act, shall be construed to mean and include such structures and property. No obligation shall be incurred by the municipality in such construction or acquisition except such as is payable solely from the funds provided under the authority of this act.

19-4102. The construction, acquisition, improvement, equipment, custody, operation and maintenance of any such works for the collection, treatment or disposal of sewage and the collection of revenue therefrom for the service rendered thereby, shall be effected and supervised by a Committee to be designated for such purpose by the Municipal Council; which Committee, however, will act under the control of the Council to such extent as may be provided in the ordinance or resolution appointing the Committee . . .

19-4103. The Sewer Committee shall have power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this act; . . . The Sewer Committee may employ engineers, architects, inspectors, superintendent, manager, collectors, attorneys, and such other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do such work as the Committee shall direct. All such compensation and all expenses and liabilities incurred in carrying out the provisions of this act shall be paid solely from funds provided under the authority of this act, . . . After the construction, installation, and completion of the works or the acquisition thereof, the

Sewer Committee shall operate, manage and control the same and may order and complete any extensions, betterments and improvements of and to the works that it may deem expedient, if funds therefor be available or are made available as provided in this act, and shall establish rules and regulations for the use and operation of the works, and of other sewers and drains connected therewith so far as they may effect the operation of such works, and do all things necessary or expedient for the successful operation thereof . . .

19-4104. Before any city or town shall construct or acquire any works under this act, the Municipal Council shall enact an ordinance or ordinances which shall (a) set forth a brief and general description of the works . . .; (b) set forth the cost thereof estimated . . .; (c) order the construction . . . of such works; . . . (e) direct that revenue bonds of the city . . . shall be issued . . . (f) contain such other provisions as may be necessary in the premises.

19-4105. Every such city or town shall have power to condemn any such works to be acquired, and any land, rights, easements, franchises and other property, real or personal deemed necessary or convenient for the construction or any such works, or for extensions, improvements, or additions thereto, and in connection therewith may have and exercise all the rights, powers and privileges of eminent domain granted to cities and towns under the laws relating thereto. Title to property condemned shall be taken in the name of the city or town . . .

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19-4110. Any specified portion of the proceeds of an issue of bonds authorized under this act (§§ 19-4101—19-4122) may be allocated by the Municipal Council to any particular project; or to new construction (as distinguished from the purchase of works already constructed) or *vice versa*; . . .

19-4111. In the discretion of the Municipal Council or Sewer Committee, such bonds may be secured by a trust indenture by and between the city or town and a corporate

trustee, which may be any domestic or non-resident trust company or bank having the powers of a trust company, and such trust indenture may convey or mortgage the works or any part thereof . . .

19-4112. At or before the issuance of any such bonds the Council shall by said ordinance create a sinking fund for the payment of the bonds and the interest thereon and the payment of the charges of banks or trust companies for making payment of such bonds or interest, and shall set aside and pledge a sufficient amount of the net revenues of the works, hereby defined to mean the revenues of the works remaining after the payment of the reasonable expense of operation, repair and maintenance, such amount to be paid by the Sewer Committee into said sinking fund at intervals to be determined by ordinance prior to issuance of the bonds, for (a) the interest upon such bonds as such interest shall fall due, and (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time and (d) a margin for safety and for the payment of premiums upon bonds retired by call or purchase as herein provided, . . . After the payments into the sinking fund as herein required, the Sewer Committee may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the Sewer Committee sufficient for operation, repair and maintenance for an ensuing period of not less than twelve months and for depreciation, into the sinking fund or into a fund for extensions, betterments and additions to the works.

19-4113. The Council of the city or town shall have power, and it shall be its duty, by ordinance to establish and maintain just and equitable rates or charges for the use of and the service rendered by such works, to be paid by each landowner whose premises are connected with, and use, such works by or through any part of the sewerage system of the city or town, or whose premises in any way use, or are served by, such works; and the council may change and readjust such rates or charges from time to time to such extent as will not render insecure the rights of

the holders of revenue bonds or violate any sinking fund agreement, or other lawful agreement, with such bondholders. It is the intention of this act that a landowner shall be liable for such service charge even though the use of the sewer system is by his tenant or lessee; but vacant, unoccupied property not actually using such works shall not be subject to a service charge. Such rates or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be deemed the revenues of the works . . . The aggregate of the rates or charges shall always be sufficient for such expense of operation, repair and maintenance and for such sinking fund payments. All such rates or charges if not paid when due shall constitute a lien upon the premises served by such works; said charges to constitute a lien upon the fee title to the land and permanent improvements even though the occupant receiving the benefit of the service for which the rate or charge is due has merely a leasehold interest (or other lesser estate) in the premises. If any service rate or charge so established shall not be paid within thirty days after the same is due, the amount thereof, together with a penalty of ten per cent, and a reasonable attorney's fee, may be recovered by the Sewer Committee in a Chancery suit, filed in the Chancery Court of the county where the works (or the greater part of them) shall be located, in the name of the city or town or in the name of the Trustee under the indenture securing the revenue bonds, or in the name of the bondholders (To such extent as their right to sue in their own name may be permitted under the Indenture), in which suit said lien may be foreclosed against such lot, parcel of land or building.

* * *

19-4116. Any city or town operating a sewage collection system and/or sewage disposal works as defined in this act or which as herein provided has ordered the construction or acquisition of such works (in this section called the owner) is hereby authorized to contract with one or more other cities, towns or political subdivisions

within the state (in this section called the lessee), and such lessees are hereby authorized to enter into such contracts with such owners, for the service of such works to such lessees and their inhabitants, but only to the extent of the capacity of the works without impairing the usefulness thereof to the owners, upon such terms and conditions as may be fixed by the Sewer Committee or Sanitary Board and approved by ordinance of the respective contracting parties; Provided, however, that no such contract shall be made for a period of more than fifteen years or in violation of the provisions of said ordinance authorizing bonds hereunder or in violation of the provisions of said trust indenture. The lessee shall by ordinance have power to establish, change and adjust (so far as will not impair the rights of bondholders) rates and charges for the service rendered therein by the works against the owners of the premises served, in the manner hereinbefore provided for establishing, changing and adjusting rates and charges for the service rendered in the city or town where the works are owned and operated, and such rates or charges shall be collectable and shall be a lien as herein provided for rates and charges made by the owner. The necessary intercepting sewers and appurtenant works for connecting the works of the owner with the sewerage system of the lessee shall be constructed by the owner and/or the lessee upon such terms and conditions as may be set forth in said contract, and the cost or that part of the cost thereof which is to be borne by the owner may be paid as a part of the cost of the works from the proceeds of bonds issued under this act unless otherwise provided by said ordinance or trust indenture prior to the issuance of the bonds . . .

* * *

19-4119. Any holder of any such bonds or any of the coupons attached thereto, and the trustee, if any, except to the extent the rights herein given may be restricted by said ordinance authorizing issuance of the bonds or by the trust indenture, may either at law or in equity, by suit, action, mandamus or other proceeding protect and enforce any and all rights granted hereunder or under such ordinance or trust indenture, and may enforce and compel performance of all duties required by this act or by such

ordinance or trust indenture to be performed by the city or town issuing the bonds or by the Sewer Committee or any officer, including the making and collecting of reasonable and sufficient charges and rates for service rendered by the works . . .

19-4120. The authority herein given shall be in addition to, and not in derogation of, any power existing in any city or town under any statutory or charter provisions which it may now have or hereafter adopt. For all purposes of this act, all cities and towns shall have jurisdiction for ten miles outside the corporate limits thereof.

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4. Agreement between United States Department of Interior and City of Hot Springs (terms agreed upon in 1933 and document signed March 25, 1935).

(T. 39; R. 38)

AGREEMENT

The following agreement is entered into between The City of Hot Springs, Arkansas through and by its Mayor Leo P. McLaughlin and the National Park Service, Department of the Interior through and by Thomas J. Allen, Jr., Superintendent Hot Springs National Park., Ark., in connection with participation of the Government through Hot Springs National Park, National Park Service Department of the Interior in the expense of constructing a city sewer system and sewage plant at Hot Springs, Ark.

1. The National Park Service will recommend to the Secretary of the Interior that 27½ percent of the cost of construction of a sewage disposal system for Hot Springs, Arkansas, be borne by the Government to cover usage of the system by the Government sources in Hot Springs National Park; Providing:

1. That the Government be not charged for any service or use of the system at any time in the future.

2. That the cost of all repairs, alterations, maintenance and operation of the system be borne by other than the United States Government sources.

3. That the plans and specifications for the system be drawn up by a firm of consulting engineers conversant with the sewage disposal plants and considered capable by representatives of the Interior Department; and that said plans and specifications meet with the approval of the State Health Department and the U. S. Public Health Service.

4. That representatives of the Interior Department shall have the right to enter and inspect the operation of the plant at any time and to request betterment of the maintenance and operation of the City of Hot Springs authorities when such betterment is considered necessary. Should the representatives of the Interior Department and the City of Hot Springs not agree as to need of such betterment the question then to be considered by a board of arbitration consisting of a representative of the Interior Department, a representative of the City of Hot Springs, a representative of the State Health Department, a representative of the sanitation division of the U. S. Public Health Service, and a representative of the Hot Springs Chamber of Commerce.

5. Necessary replacements of the entire plant due to natural or human destruction not to be considered a part of paragraph "2."

6. The Government shall pay to the City of Hot Springs the sum represented as 27½% of the total cost of the project, or $82,000.00, whichever is less, as the Government's full share of the construction, engineering and any relative or contingent expense of the City of Hot Springs for the complete provision and installation of the sewerage system approved as Public Works Project Docket No. 3715. Partial payment of the said sum shall be made to the City of Hot Springs by the Government as the work progresses, at the end of each calendar month or as soon thereafter as practical on estimates made by the City of Hot Springs during the month covered by said estimate for the provision and installation of each feature of the sewerage system, and the Government's share of such ex-

penditure shall be not more than 27½% of the accumulated cost at the time payment is made by the Government.

2. Now in token of this agreement as set forth above being equitable and satisfactory each to each, we hereunto set our respective hands and seals—

CITY OF HOT SPRINGS, ARKANSAS
HOT SPRINGS NATIONAL PARK,
National Park Service,
Department of the Interior.

5. Cession to United States by Arkansas. Act of Arkansas of Feb. 21, 1903, Act 30. (Vol. 2 Arkansas Statutes 1947 Annotated, Official Ed., Section 10-1123).

. . . That exclusive jurisdiction over that part of the Hot Springs reservation known and described as part of the Hot Springs Mountain, and whose limits are particularly described by the following boundary lines: Commencing at stone monument number seven set upon the west line of Reserve avenue and marking the boundary line of Hot Springs Mountain, and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-two and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central avenue or to stone monument number thirty-three, thence south along the east line of Central avenue to where the same is intersected by Reserve avenue at stone monument number thirty, thence along the north boundary line of Reserve avenue to stone monument number seven, the point of commencement, all in township two south, range nineteen west, in the county of Garland, State of Arkansas, being a part of the permanent United States Hot Springs Reservation, is hereby ceded and granted to the United States of America to be exercised so long as the same shall remain the property of the United States; . . .

6. Acceptance of cession and exclusive jurisdiction by United States. Act of Congress, April 20, 1904, c. 1400, 33 Stat. at L. 187 (16 USC § 372).

That the portion of the Hot Springs Mountain Reservation in the State of Arkansas situated and lying within boundaries defined as follows, "commencing at stone monument numbered seven, set upon the west line of Reserve avenue and marking the boundary line of Hot Springs Mountain, and running thence in a northwesterly direction to a point upon the south line of Fountain Street to a stone monument numbered forty-two and marking the boundary line of Hot Springs Mountain, thence along the south line of Fountain Street to its intersection with Central avenue or to stone monument numbered thirty-three; thence south along the east line of Central avenue to where the same is intersected by Reserve avenue at stone monument numbered thirty; thence along the north boundary line of Reserve avenue to stone monument numbered seven, the point of commencement; all in township two south, range nineteen west, in the county of Garland, and State of Arkansas, being a part of the permanent United States Hot Springs Reservation," sole and exclusive jurisdiction over which was ceded to the United States by an act of the general assembly of the State of Arkansas, entitled "An act ceding jurisdiction to the United States over a part of the Hot Springs Mountain Reservation," approved February twenty-first, nineteen hundred and three, which cession is hereby accepted, or within such boundaries as may be defined hereafter, shall be under the sole and exclusive jurisdiction of the United States, and all laws applicable to places under such sole and exclusive jurisdiction shall have full force and effect therein . . .

7. Act of Congress, Dec. 16, 1878, c. 5, 20 Stat. at L. 258, as amended, particularly by Act of April 12, 1904, c. 1249, 33 Stat. at L. 173 et seq. (16 USC § 361).

. . . And provided further, that the Secretary of the Interior be, and he is hereby authorized to grant to hotels having bath houses attached, and to bath houses situated on the Hot Springs reservation, as well as in the

city of Hot Springs, Arkansas, the right to install, maintain and use, either in said bath houses or in connection with the rooms of said hotels or the bath houses attached to said hotels, as many bath tubs as in his discretion he may deem proper and necessary for the public service and the amount of hot water will justify . . .; and the Hot Springs with the reservation and mountain are hereby dedicated to the United States, and shall remain forever free from sale or alienation.

8. Act of Congress, Mar. 3, 1891, c. 538, 26 Stat. at L. 842 et seq. (16 USC Sec. 362, 363).

. . . That the Secretary of the Interior is hereby authorized and empowered to execute leases to the bath-houses and bath house sites on the permanent reservation at Hot Springs, Arkansas, for periods not exceeding twenty years, and at an annual rental of not less than thirty dollars per tub for each tub used in any bath-house. Said annual rental shall be payable quarterly in advance, at the office of the Government Superintendent of said property, in Hot Springs, Arkansas: . . . Provided, that after the Army and Navy hospital bath-house, the public bath-house, the bath-houses which are now or may hereafter be authorized on the permanent reservation, the Arlington Hotel, and the bath-houses off the permanent reservation now authorized to be supplied with hot water, in the order herein named, if there shall still be a surplus of hot water the Secretary of the Interior may, in his discretion and under such regulations as he may prescribe, cause hot water to be furnished to bath-houses, hotels, and families off the permanent reservation: . . . Provided further, That the Secretary of the Interior shall at the expiration of each period of five years during the continuance of each lease made hereunder readjust the terms and amounts of payment provided for therein as may be just, but not less than the minimum herein provided. . .

Section 3. That all power now possessed by the Secretary of the Interior for the regulating of leases of bath-houses, bath-house privileges, or hotel rights on the reservation, or as to supplying hot water to places off the reservation, is hereby retained and continued in him; and

full power is vested in the Secretary of the Interior to provide, in all leases to be executed against any combination among lessees or their assigns, as to ownership, prices, or accommodations at any bath-house; full power is also vested in him to make all needful rules and regulations as to the use of the hot water, and to prevent its waste, including full power to authorize the superintendent of the reservation to make examination and inspection at any time of the manner of using the hot water at any bath-tub, that it may be used in proper quantity only, and to prevent its waste; and also full power to provide and fix reasonable maximum charges for all baths, or bathing privileges, or services of any person connected with any bath-house furnished to bathers; . . . and also, generally, the Secretary of the Interior may make all necessary rules or regulations as to said bath-houses and the service therein as shall be deemed best for the public interest, and to provide penalties for the violation of any regulation which may be enforced as though provided by Act of Congress. All leases and grants of hot-water privileges shall be held to be subject to all regulations now in force or which may be hereafter adopted by the Secretary of the Interior, and for any violation of any regulation, known to the proprietor at the time of the offense, the lease or grant may be canceled by the Secretary of the Interior. It shall be expressly provided in all leases and grants of privilege for hot water that the bath-house for which provision is made shall not be owned or controlled by any person, company, or corporation which may be the owner of or interested (as stockholder or otherwise) in any other bath-house on or near the Hot Springs Reservation; that neither the hot-water privilege granted nor any interest therein, nor the right to operate or control said bath-house, shall be assigned or transferred by the party of the second part without the approval of the Secretary of the Interior first obtained, in writing . . . All buildings to be erected on the reservation shall be on plans first approved by the Secretary of the Interior, and shall be required to be fire proof, as nearly as practicable . . .

9. Article 1, Section 8, Clause 17 of the Constitution of the United States.

The congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;

10. Article 4, Section 3, clause 2, of the Constitution of the United States.

. . . The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;

11. Amendment 14, Section 1, to the Constitution of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

12. Article 1, Section 10, clause 1, of the Constitution of th United States.

No state shall . . . pass any . . . law impairing the obligation of contracts, . . .

13. Article 6, clause 2, of the Constitution of the United States.

. . . This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in

every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding . . .